

REGARDING THE USE OF THE TRUST LAND AND RE-
SOURCES OF THE CONFEDERATED TRIBES OF THE WARM
SPRINGS RESERVATION OF OREGON

OCTOBER 30, 2001.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

REPORT

[To accompany H.R. 483]

The Committee on Resources, to whom was referred the bill (H.R. 483) regarding the use of the trust land and resources of the Confederated Tribes of the Warm Springs Reservation of Oregon, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. AUTHORIZATION FOR 99-YEAR LEASES.

The first section of the Act entitled “An Act to authorize the leasing of restricted Indian lands for public, religious, educational, residential, business, and other purposes requiring the grant of long-term leases”, approved August 9, 1955 (25 U.S.C. 415(a)), is amended—

(1) by inserting “, the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon,” after “Spanish Grant”); and

(2) by inserting “lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon” before “, lands held in trust for the Cherokee Nation of Oklahoma”.

SEC. 2. USE OF CERTAIN TRUST LANDS AND RESOURCES FOR ECONOMIC DEVELOPMENT.

(a) **APPROVAL OF AGREEMENT.**—The use of tribal lands, resources, and other assets described in the document entitled “Long-Term Global Settlement and Compensation Agreement”, dated April 12, 2000 (hereafter referred to as the “GSA”), entered into by the Department of the Interior, the Confederated Tribes of the Warm Springs Reservation of Oregon (in this section referred to as the “Tribes”), and the Portland General Electric Company, and in the Included Agreements, as attached to the GSA on April 12, 2000, and delivered to the Department of the Interior on that date, is approved and ratified. The authorization, execution, and delivery of the GSA is approved. In this section, the GSA and the Included Agreements are collectively referred to as the “Agreement”. Any provision of Federal law which applies to tribal land, resources, or other assets (including proceeds derived therefrom) as a consequence of the Tribes’ status as a federally recognized Indian tribe shall not—

(1) render the Agreement unenforceable or void against the parties; or

(2) prevent or restrict the Tribes from pledging, encumbering, or using funds or other assets that may be paid to or received by or on behalf of the Tribes in connection with the Agreement.

(b) **AUTHORITY OF SECRETARY.**—

(1) **IN GENERAL.**—Congress hereby deems that the Secretary of the Interior had and has the authority—

(A) to approve the Agreement; and

(B) to implement the provisions of the Agreement under which the Secretary has obligations as a party thereto.

(2) **OTHER AGREEMENTS.**—Any agreement approved by the Secretary prior to or after the date of the enactment of this Act under the authority used to approve the Agreement shall not require Congressional approval or ratification to be valid and binding on the parties thereto.

(c) **RULES OF CONSTRUCTION.**—

(1) **SCOPE OF SECTION.**—This section shall be construed as addressing only—

(A) the validity and enforceability of the Agreement with respect to provisions of Federal law referred to in section 2(a) of this Act; and

(B) approval for provisions of the Agreement and actions that are necessary to implement provisions of the Agreement that the parties may be required to obtain under Federal laws referred to in section 2(a) of this Act.

(2) **AUTHORITY.**—Nothing in this Act shall be construed to imply that the Secretary of the Interior did not have the authority under Federal law as in effect immediately before the enactment of this Act to approve the use of tribal lands, resources, or other assets in the manner described in the Agreement or in the implementation thereof.

SEC. 3. EFFECTIVE DATE.

This Act shall take effect as of April 12, 2000.

PURPOSE OF THE BILL

The purpose of H.R. 483 is to provide the authorization for 99-year leases for the Confederated Tribes of Warm Springs Reservation of Oregon and to approve an agreement regarding the use of trust land and resources of those Tribes.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 483 would extend the lease of restricted lands owned by the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes) for a period not to exceed 99 years and approve and ratify the Long-Term Global Settlement and Compensation Agreement (Agreement) between the Department of Interior (DOI), the Tribes, and the Portland General Electric Company (PGE). A similar bill (H.R. 5681) was introduced at the end of the 106th Congress, but no action was taken.

The legislation ratifies and confirms the Agreement between DOI, the Tribes and PGE. It authorizes the Secretary of the Interior to take all actions necessary to approve and implement the Agreement. The bill clarifies that federal law in place at the time did provide the necessary federal authority for such approval. The bill also provides that no federal law regarding tribal lands, resources, or other assets shall render the Agreement unenforceable or void against the parties or prevent encumbrance of sums paid to, or received by, the Tribes in connection with the Agreement. This will only apply to provisions of the Agreement regarding: (1) the use of tribal land, resources, or other assets; and (2) approvals under federal and State law that may be required under provisions of the Agreement regarding the use of tribal lands, resources, or other assets. It will also deem the effective date of the legislation to be 12 April 2000.

The Agreement concerns a 440 megawatt hydroelectric project consisting of the Pelton Dam, the Round Butte Dam, the Pelton Reregulating Dam, and the associated generation and transmission facilities. Under a December 1955 agreement certain easements and rights were provided to PGE to construct, operate, and maintain the dams and the associated generation and transmission facilities of the Pelton and Round Butte dams. The agreement established compensation to be paid to the Tribes for the easements and rights. Rights were also granted to the Tribes to construct, operate and maintain the generation facilities in the Pelton Reregulating dam. The Tribes and PGE entered into a 1985 Agreement which established compensation be paid to the Tribes through 31 December 2001.

On 12 April 2000, the Tribes and PGE entered into the Agreement to provide for their respective rights and obligations with respect to the hydroelectric project, to minimize the potential for future disagreements, avoid incremental expenses and settle all existing disputes and claims. The Agreement will foster economic development for the Tribes by enabling the Tribes to purchase for \$30 million (initial purchase of \$26 million and an additional \$6 million to make improvements) one-third of the project with the option to buy additional interests that will result in the Tribes having a controlling interest in the project. PGE will continue to operate the project under the guidance of a Committee composed of representatives of the owners of the project—PGE and the Tribes. The Tribes will be able to sell the power realized from the project to PGE or on the open market.

Because of the DOI's trust responsibility to federally-recognized Indian tribes, DOI participated in all settlement negotiations and approved the 1955 agreement and the 1985 and 2000 settlement agreements. The trust responsibility also requires the United States to consent to the lease or the sale of tribal trust lands, resources or other assets.

The Tribes are seeking the extension of the lease and ratification of the Agreement to provide assurance that there are no legal impediments to the pledge of revenues the Tribes receive from the sale of power for the project. Various laws regulate the lease of trust lands, the revenue derived from trust lands and resources, and rights-of-way.¹ The Tribes and their bond counsel were concerned that some ambiguities on the face of existing statutes granting the authorities contained in the Agreement could lead to doubt that there was federal authority for the Agreement. The Tribes will issue revenue bonds to finance its acquisition of certain interests in the project and the revenue bonds will be secured solely by the revenues the Tribes derives from the selling of its share of power generated by the dams. The legislation is designed to give the bond counsel and the Tribes the assurance that there are no legal impediments to the pledge of revenues the Tribes receives from the sale of power for the project to the lender to repay the loan.

Since the introduction of H.R. 483, the Tribes, PGE, bond counsel and DOI have had further discussions regarding the legislation. During Committee consideration of the measure, H.R. 483 was

¹ 25 U.S.C. § 415(a); 25 U.S.C. § 477; 25 U.S.C. § 323; 25 U.S.C. § 169(c); 25 U.S.C. 177 and 16 U.S.C. § 803(e).

amended to further tighten the language of the bill to limit the impact of the legislation to federal law which applies to tribal land, resources, and other assets as a consequence of the tribal status of the Tribes as a federally recognized Indian tribe. As ordered reported, the bill now states that any future agreements approved by the Secretary of the Interior under the same authority used to approve the Agreement does not need Congressional approval or ratification. In addition, the bill clarifies that its existence may not be construed to imply that the Secretary does not have the authority to approve the use of the tribal land, resources or other assets.

H.R. 483 has the support of the Oregon Congressional delegation (Representatives Wu, Blumenauer, DeFazio and Hooley) and the Senators from Oregon have introduced a Senate companion bill (S. 266). The project is located in Jefferson County, Oregon, and the Jefferson County Board of Commissioners is in support of H.R. 483.

COMMITTEE ACTION

H.R. 483 was introduced on February 6, 2001, by Congressman Greg Walden (R-OR). The bill was referred to the Committee on Resources. On October 17, 2001, the Full Resources Committee met to consider the bill. Congressman Walden offered an amendment in the nature of a substitute which has been described above. The amendment was adopted by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. *Cost of Legislation.*—Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. The Committee does not believe enactment of this bill will have any costs or any effect on the federal budget.

2. *Congressional Budget Act.*—As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. *General Performance Goals and Objectives.*—This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. *Congressional Budget Office Cost Estimate.*—Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Com-

mittee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in *italic* and existing law in which no change is proposed is shown in *roman*):

ACT OF AUGUST 9, 1955

AN ACT To authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) any restricted Indian lands, whether tribally or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Pueblo of Santa Ana (with the exception of the lands known as the "Santa Ana Pueblo Spanish Grant"), *the reservation of the Confederated Tribes of the Warm Springs Reservation of Oregon*, the Moapa Indian reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Burns Paiute Reservation, the Kalispel Indian Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, Yavapai-Prescott Community Reservations, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Viejas Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, the Cabazon Indian Reservation, the Mille Lacs Reservation with respect to a lease between an entity established by the Mille Lacs Band of Chippewa Indians and the Minnesota Historical Society, leases of lands comprising the Moses Allotment Numbered 10, Chelan County, Washington, and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indi-

ans, and lands held in trust for the Reno Sparks Indian Colony, lands held in trust for the Torres Martinez Desert Cahuilla Indians, lands held in trust for the Guidiville Band of Pomo Indians of the Guidiville Indian Rancheria, lands held in trust for the Confederated Tribes of the Umatilla Indian Reservation, *lands held in trust for the Confederated Tribes of the Warm Springs Reservation of Oregon*, lands held in trust for the Cherokee Nations of Oklahoma, lands held in trust for the Pueblo of Santa Clara, lands held in trust for the Confederated Tribes of the Colville Reservation, lands held in trust for the Cahuilla Band of Indians of California, lands held in trust for the confederated Tribes of the Grand Ronde Community of Oregon, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

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